IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1228 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI SHANKARLAL AMBALAL PATEL

Versus

KANTILAL PARSHOTTAMDAS PATEL

Appearance:

MR SI NANAVATI for Petitioner No. 1-3

MR PK JANI for Respondent No. 1,4-5,7-8

..... for Respondent No. 2-3,6,10-12

GOVERNMENT PLEADER for Respondent No. 9,13

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 26/02/2003

ORAL JUDGEMENT

1. Heard learned Advocate Mr. Sanjiv Dave on behalf of Mr. S.I. Nanavati for the petitioners.

2. This Revision Application is filed against an order passed by the Civil Judge (SD), Mehsana, below an order passed by the Inspecting Officer, Court Fees, Mehsana, in Reference Case No. 46/88 in Regular Civil Suit No. 111/88.

3. The suit was originally filed by the petitioners on the court fees of sum of Rs. 30/- stating that the suit is for declaration and injunction. However, Inspecting Officer, Court Fees, vide his Reference Case No.46/88, came to the conclusion that since the relief claimed can be evaluated in terms of money, the maximum court fees as prescribed by Schedule-I of the Bombay Court Fees Act, 1959 Article-1, would be payable and then the court fees comes to Rs.15,000/-. After the Reference Case is filed in the Court, the learned Civil Judge (SD), Mehsana, vide his order dated 25.10.1988 came to the conclusion that in all the plaintiffs was required to pay court fees of Rs. 33,520/- and since the court fee sum of Rs.30/- was already affixed, the present petitioners being plaintiffs was bound to pay the deficit court fee of Rs. 33,490/-. This order is challenged in this Revision Application.

4. It was submitted, as found from the docket of the file, that this Court vide order dated 6th of December, 1988 directed the petitioners to deposit the amount of court fees of Rs.15,000/- in the Trial Court. Accordingly, as per the order passed by this Court on 10th of January, 1989, the petitioners had deposited an amount of Rs. 15,000/- in the Trial Court.

5. Having gone through the order impugned in the Revision Application as well as the provisions of the Bombay Court Fees Act, 1959, it is amply clear that Article 1 of Schedule-I, which prescribes advalorem fee clearly provides that the maximum fees leviable on a plaint or memorandum of appeal or of cross objections shall be Rs. 15,000/-. So, the relief claimed by the plaintiffs may be evaluated in terms of money to crores of rupees, but the court fees would be governed by the above said proviso of Scheduled-I of Article-1 of the Bombay Court Fees Act, 1959, meaning thereby that, when the relief claimed in monetary terms, does not exceed Rs. 1 lac, the court fee will be payable as mentioned in the said Article No.1. When such amount or value exceeds Rs. 1 lac, then the court fees would be payable at the rate of Rs.100 per every Rs.10,000/- or part thereof in excess of Rs.1 lac. Then proviso makes it clear that in any case, the court fees shall not be exceeded above Rs.

15,000/-. The Inspecting Officer, Court Fees, Mehsana, has taken this view in Court Fees Reference Case No. 46/88, but this view has been modified by the learned Civil Judge (SD), Mehsana, that order is impugned in this Revision Application. In any case, the maximum Court fees that would be payable by the petitioners would come to Rs. 15,000/- as provided in the Schedule, as said above, and hence the order passed by the learned Civil Judge (SD), Mehsana, is required to be set aside and the conclusion of the Inspecting Officer, Court Fees, Mehsana, in Court fee Reference Case No.46/88 is required to be accepted.

6. In the end, in this Revision Application, setting aside the order impugned, it is held that the conclusion of the Inspecting Officer, Court Fees, Mehsana, is accepted and the plaintiffs - present petitioners are liable to pay the court fees of Rs. 15,000/- in the above said suit. Therefore, the petitioners will be at liberty to withdraw the amount of Rs. 15,000/- deposited in the Trial Court and shall pay the court fees in the Trial Court. It has been submitted by the learned Advocate for the petitioners that now the suit is withdrawn by the plaintiffs, the plaintiffs therefore would be entitled to court fees refund.

7. In this view of the matter, the Trial Court is directed to recover the court fee of Rs.15,000/- from the plaintiffs and at the same time issue court fees refund for which the petitioners may be entitled. With these observations, this Revision Application is allowed. Rule is made absolute. No costs.

(J.R. Vora, J.)

p.n.nair